Filed 6/28/16 P. v. Hughes CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JEFF HUGHES, Defendant and Appellant.	A144709 (Lake County Super. Ct. No. CR934046)

Appellant Jeff Hughes appeals from a judgment entered after a jury trial convicting him of possession of marijuana for sale (Health & Saf. Code, § 11359). His counsel on appeal filed an opening brief asking this court to conduct an independent review of the record as is required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel also informed appellant of his right to file a supplemental brief on his own behalf. Appellant declined to exercise that right. Having conducted a full-record review, we find no issues that merit briefing. We therefore affirm.

I. BACKGROUND

After waiving his right to a preliminary hearing, appellant was charged by information with possession of marijuana for sale (Health & Saf. Code, § 11359) (count one) and unlawful cultivation of marijuana (Health & Saf. Code, § 11358) (count two) arising from conduct alleged to have occurred on November 6, 2013. He entered pleas of not guilty to both counts on March 25, 2014. Jury trial began on January 22, 2015 with jury selection. On January 28, 2015, after the jury was empaneled but prior to opening

statements, the court granted the prosecution's motion to dismiss count two of the information for lack of sufficient evidence.

At trial, Deputy Sheriff Mauricio Barreto testified that on November 6, 2013, he was on duty with a police dog trained to detect the presence of drugs. While he was parked in his vehicle, he observed a red Subaru with an obstructed windshield following too closely behind another vehicle. The driver of the Subaru was later identified as appellant. Deputy Barreto conducted a traffic stop when appellant crossed the double yellow line into oncoming traffic. While Deputy Barreto was standing next to the driver-side window getting identifying information from appellant, he smelled the odor of "processed marijuana" coming from inside the vehicle. Deputy Barreto asked appellant if he had any marijuana in the car; appellant told Barreto that he had a small amount of marijuana for his personal use and that he had a "215 medical recommendation" for it.

At that point, Deputy Barreto retrieved the police dog from his vehicle and had it carry out a sniff of appellant's vehicle. The dog sat down at the trunk, which was a "passive alert" that marijuana was present in the trunk. Based on the smell and the canine alert, Deputy Barreto ordered appellant out of the vehicle and began to conduct a vehicle search with the assistance of the police dog. The dog "alerted the back portion of the vehicle, specifically a large . . . cloth bag" at which point Sergeant Andrew Davidson arrived to assist with the search. Shortly after Sergeant Davidson arrived, appellant admitted that he had five pounds of marijuana in the back of his vehicle. Deputy Barreto "read [appellant] his rights" while Sergeant Davidson conducted a search that yielded five pounds of marijuana, apportioned into five separate bags weighing "a little over" one pound each and wrapped in clothing.

After Deputy Barreto advised appellant of his rights, he conducted an interview with him. Appellant told Barreto that he lived in Laytonville in Mendocino County and that he was on his way to Lake Tahoe to sell the one-pound bags of marijuana for $1,500 each. Although Deputy Barreto created a recording of the interview that was played to the jury, the sound quality was poor and some portions were entirely inaudible. Based on appellant's admissions, Barreto placed appellant under arrest. A search incident to the

arrest yielded a small amount of marijuana, a pipe, and $802 in U.S. currency. Deputy Barreto returned the pipe and small amount of marijuana to appellant's vehicle because he believed that it was for personal medical use.

Aside from the small amount of marijuana that Deputy Barreto returned to appellant's car, he did not believe that appellant possessed the marijuana found in the one-pound bags for personal medical reasons. The area in which appellant was driving is known as a major drug trafficking corridor. October and November tend to be busy times for marijuana transportation because that is when marijuana is harvested. Although he is aware that there are different ways of consuming marijuana, Deputy Barreto did not think "edible" marijuana products required more marijuana than that consumed by smoking it. He also testified that sometimes people who have marijuana for sale also have a medical marijuana recommendation so they can "hide under" the excuse of "I need it for my medical use." He opined that five pounds of marijuana was an unreasonable amount of marijuana to be driving around with.

Sergeant Davidson testified that a "normal person" who consumes marijuana by smoking it would need about one to two pounds a year, and in his opinion a year's worth of marijuana would not exceed three and a quarter pounds. Five pounds of marijuana could last a single person who was smoking it anywhere from a year and a half to two and a half years. Davidson admitted he did not know how appellant consumed his marijuana. Davidson did not believe the bags of marijuana he found were for appellant's personal medicinal use based on the quantity, the packaging, and the large amount of currency found. Neither Barreto nor Davidson found any other evidence of sales, such as packaging materials, a scale, or any other evidence that the bags were going to be broken down into smaller amounts.

Appellant testified in his own defense. He told the jury that he had grown the marijuana found in his car in his own garden. He had a valid doctor's recommendation for the use of medical marijuana at the time; the recommendation does not contain a limit on how much he can grow or possess. He first got a recommendation back in 2002, when he was in a motorcycle wreck and had titanium placed in his right leg. He said he still

experiences pain from that accident. On the date he was stopped by Deputy Barreto, appellant had picked up his marijuana from a person in Ukiah who trimmed it for him. Appellant explained he builds houses, and said he was going to Tahoe for a construction job. He decided to pick his marijuana up on the way to Tahoe and felt it was safer in his car than in his house with a dog sitter he "didn't fully trust with all [his] medicine." He was planning to be in Tahoe for two weeks and had the $802 in cash for food, traveling and gas; the money came from a construction job he had just completed.

Appellant described the different ways he used the marijuana for medicinal purposes, including cooking it to make a marijuana-infused milk, which requires using more marijuana than if you were smoking it. He claimed he misunderstood Deputy Barreto's questions because he could not hear him, and thought Deputy Barreto had asked him how much marijuana was worth generally, not how much appellant was planning to sell the marijuana in the car for. Instead, appellant said his admission that he was going to sell the marijuana for $1500 a pound was just him telling the deputy the going rate of marijuana generally. Five pounds of marijuana is enough for a year, and appellant told Deputy Barreto that he had that quantity when the deputy initially approached the car, but he was not sure the deputy heard him. Appellant testified that he had no intent to sell the marijuana that was confiscated.

The jury began deliberations on January 29, 2015. It was instructed on the elements of the charged crime of possession for sale of marijuana (CALCRIM No. 2352) as well as on a lesser included charge of simple possession of marijuana (CALCRIM No. 2375; Health & Saf. Code, § 11357(c)), a misdemeanor. At the time, CALCRIM No. 2375 also contained an instruction on the Compassionate Use Act (Health & Saf. Code, § 11362.5) as an affirmative defense.[1]

[1] As given at appellant's trial, CALCRIM No. 2375 (2014 ed.) stated, in relevant part: "Possession of marijuana is lawful if authorized by the Compassionate Use Act. In order for the Compassionate Use Act to apply, the defense must produce evidence tending to show that his possession or cultivation of marijuana was for personal medical purposes with a physician's recommendation or approval. The amount of marijuana possessed must be reasonably related to the patient's current medical needs. The People

On January 30, 2015, the jury returned a verdict of guilty on the remaining charge of possession of marijuana for sale. At sentencing on March 24, 2015, appellant was placed on probation for three years and ordered to serve 60 days in the county jail.

II. DISPOSITION

We have reviewed the record on appeal and conclude there are no arguable issues within the meaning of *People v. Wende, supra,* 25 Cal.3d 436. Appellant was afforded a fair trial and was represented effectively by counsel. The judgment is affirmed.

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Streeter, J.

We concur:

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Ruvolo, P.J.

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Rivera, J.

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have the burden of proving beyond a reasonable doubt that the defendant was not authorized to possess or cultivate marijuana for medical purposes. If the People have not met this burden, you must find the defendant not guilty of this crime." That portion of the instruction was removed in February 2015, and is now encompassed in CALCRIM No. 3412 (Feb. 2015 new).